



UNITED STATES DEPARTMENT OF
COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
525 NE Oregon Street
PORTLAND, OREGON 97232-2737

F/NWR5

May 10, 2002

Lawrence Evans
Attn: Mark Gronceski
US Army Corps of Engineers
1600 Executive Parkway, Suite 210
Eugene, OR 97401

RE: Biological Opinion on the effects of issuing USACE Clean Water Act Section 404 permit #2002-00109 for construction activities at the Leaburg Dam Fish Ladders, McKenzie River, Oregon

Dear Mr. Evans:

Enclosed is the final biological opinion on the U.S. Army Corps of Engineers' (USACE) proposed issuance of Clean Water Act Section 404 permit #2002-00109 for construction activities at Eugene Water & Electric Board's (EWEB) Leaburg Dam fish ladders on the McKenzie River, Oregon. This document represents National Marine Fisheries Service's (NMFS) biological opinion on the effects of the proposed action on Upper Willamette River (UWR) chinook salmon and designated critical habitat in accordance with Section 7 of the Endangered Species Act of 1973 (ESA) as amended (16 USC 1531 *et seq.*). This consultation is also being provided to EWEB as the permit applicant.

On September 6, 2001, NMFS and the U.S. Fish and Wildlife Service (USFWS) issued a joint biological opinion on the operation of the Leaburg-Walterville Hydroelectric Project (FERC# 2496), including the conservation measures included in EWEB's Biological Report, and license amendments that were developed by NMFS, USFWS, EWEB, and FERC separated staff. On December 18, 2001, FERC issued EWEB an amended license that requires replacement of the non-functioning right bank ladder and modification of the left bank ladder at Leaburg Dam.

The proposed construction at the Leaburg Dam fish ladders prompted the need for a Clean Water Act Section 404 permit from the USACE. NMFS prepared this biological opinion in response to USACE's April 3, 2002, letter requesting formal consultation on the potential effects of issuing a Clean Water Act Section 404 permit for the Leaburg Dam fish ladders construction activities on UWR chinook salmon.

NMFS concludes in this opinion that the proposed construction activities are not likely to jeopardize the continued existence of UWR chinook salmon. The issuance of a Clean Water Act Section 404 permit for the construction activities at the Leaburg Dam fish ladders will ultimately improve passage conditions for UWR chinook salmon through the installation and modification



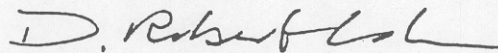
of fish ladders at Leaburg Dam. However, NMFS also believes that the proposed action is reasonably certain to result in incidental take of UWR chinook salmon because of the detrimental effects from the capture and release of fish necessary to isolate the in-water work area, increased sediment and possible pollutant levels, and riparian habitat disruption. Thus, NMFS has included in this biological opinion reasonable and prudent measures with non-discretionary terms and conditions that NMFS believes are necessary to minimize the likelihood of incidental take associated with this project.

The enclosed biological opinion contains an analysis of the effects of the proposed action on designated critical habitat. Shortly before the issuance of this opinion, however, a Federal court vacated the rule designating critical for the Evolutionarily Significant Unit considered in this opinion. The analysis and conclusions regarding critical habitat remain informative for our application of the jeopardy standard, even though they no longer have independent legal significance. Also, in the event critical habitat should be redesignated before this action is fully implemented, the analysis will be relevant when determining whether a reinitiation of consultation would be necessary at that time. For these reasons and the need to timely issue this opinion, our critical habitat analysis has not been removed from this opinion.

This opinion also serves as consultation on Essential Fish Habitat pursuant to Section 305(b) of the Magnuson-Stevens Fishery Conservation Management Act and its implementing regulations (50 CFR 600). This concludes formal consultation on the action outlined in the USACE's request. Due to the limited time frame in which to complete construction activities this season, we encourage the USACE to expedite, if possible, the issuance of the 404 permit to EWEB so that construction can be completed on schedule.

We appreciate your cooperation in completing this consultation. Please contact Mindy Simmons of my Hydro Division staff at 503-872-2854 if you have any questions about this consultation.

Sincerely,



D. Robert Lohn
Regional Administrator

cc: Chris Allen, USFWS
Laurie Power, EWEB
Jeff Ziller, ODFW
James Hastreiter, FERC
Dan Cary, DSL